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| 10/658,338 | 09/10/2003 | Michael W. Bosse | 23122.01 | 1867 |
| 29891 | 7590 | 07/13/2005 | EXAMINER | |
| LAURA M. HAGAN 1025 STATE STREET BOWLING GREEN, KY 42101 | | | | BLAKE, CAROLYN T |
| | | ART UNIT | | PAPER NUMBER |
| | | 3724 | | |

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

with

| | | | |
|------------------------------|-------------------------------------|-------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/658,338 | BOSSE, MICHAEL W. | |
| | Examiner Carolyn T. Blake | Art Unit 3724 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 April 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. This action is in response to applicant's amendment received on April 29, 2005.
2. The objection to the drawings is withdrawn in view of the amendment.
3. The objection to the specification is withdrawn in view of the amendment.
4. The objection to claim 1 is withdrawn in view of the amendment.
5. The text of those sections in Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

6. Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (D272,712). See the *Figures* section at the end of this Office action.

Regarding claim 1, Allen teaches a lock removal tool (1), comprising: an elongated bar (2) having a first end and a second end; a lock cutting tool (3) disposed on the first end of said bar (2), the lock cutting tool (3) being a generally rectangular, flat plate having leading (4) and trailing edges (5) and top and bottom surfaces, said bar (2) being joined to the lock cutting tool (3) generally between the leading (4) and trailing (5) edges, said bar (2) being angled away the top surface and extending rearward from the lock cutting tool (3); a tool piece (6) extending from the second end of said bar (2) axially aligned with said bar (2); a first impact collar (7) disposed on said bar (2) near the first end; a second impact collar (8) disposed on said bar near the second end; and a weight (9) slidably disposed on said bar (2) between the first (7) and second (8) impact collars. Note: impact collars (7, 8) are defined as such because they are circular members that impact the tool piece (6) and the lower collar.

Regarding claim 6, Allen teaches the leading edge (4) of said lock cutting tool (3) is bifurcated to form a cutting slot (10), the cutting slot (10) being a generally "V" shaped slot having inner edges.

Regarding claim 7, the top surface of the lock cutting tool (3) is tapered along the leading edge (4).

Regarding claim 8, Allen teaches the leading edge (4) of said lock cutting tool (3) is bifurcated to form a cutting slot (10) being a generally "V" shaped slot having inner edges, the top surface of said cutting tool being tapered along the inner edges (11) of said cutting slot (10).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 6-8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gue (3,468,657) in view of Gallo (6,308,934).

Regarding claim 1, Gue discloses a lock removal tool comprising: an elongated bar (10) having a first end and a second end; a lock cutting tool (20) disposed on the first end of said bar (10), a tool piece (18) extending from the second end of said bar (10) axially aligned with said bar (10); a first impact collar (24) disposed on said bar (10) near the first end; a second impact collar (22) disposed on said bar (10) near the second end; and a weight (26) slidably disposed on said bar (10) between the first (24)

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and second (24) impact collars. Gue fails to disclose the lock cutting tool is a generally rectangular, flat plate joined to the bar between its leading and trailing edges. However, Gallo discloses a lock removal tool comprising an elongated bar (12) having a first end and a second end; a lock cutting tool (18) disposed on the first end of said bar (12), the lock cutting tool (18) being a generally rectangular, flat plate having leading (20) and trailing edges and top and bottom surfaces, said bar (12) being joined to the lock cutting tool (18) generally between the leading and trailing edges, said bar (12) being angled away from the top surface and extending rearward from the lock cutting tool (18); a first impact collar (14) disposed on said bar (12) near the first end; a second impact collar (16) disposed on said bar (12) near the second end; and a weight (32) slidably disposed on said bar (12) between the first (14) and second (16) impact collars. Unlike the Gue device, the lock cutting tool of the Gallo device allows for prying of the lock from the door. Therefore, it would have been obvious to one of ordinary skill in the art to provide a different lock cutting tool, as disclosed by Gallo, on the Gue device for the purpose of cutting and prying the lock from the door.

Regarding claim 2, Gue discloses the tool piece (18) comprises a length of metal stock (specifically steel). See col. 1, line 56.

Regarding claim 6, Gallo discloses the leading edge (20) of the lock cutting tool (18) is bifurcated to form a cutting slot (22), the cutting slot (22) being a generally "V" shaped slot having inner edges.

Regarding claim 7, Gallo discloses the top surface of the lock cutting tool (18) is tapered along the leading edges.

Regarding claim 8, Gallo discloses the leading edge of the lock cutting tool (18) is bifurcated to form a cutting slot (22), the cutting slot being a generally "V" shaped slot having inner edges, the top surface of said cutting tool (18) being tapered along the inner edges of the cutting slot (22).

Regarding claim 13, Gallo discloses the bar (12) and the lock cutting tool (18) are joined at an angle of between 15 and 45 degrees.

9. Claim 2 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Allen (D272,712). The cross sections in FIGS 2A and 4 appear to be metal. Therefore, there is a high probability the entire tool, including the tool piece, is formed from metal. However, to the degree it can be argued this is speculative, Official notice is taken it is old and well known in the art to form threaded nuts, such as the tool piece (6), of metal. Therefore, to form parts of metal would have been obvious in order to make the entire tool from metal and long lasting.

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gue in view of Gallo applied to claims 1 and 2 above, and further in view Skamser (D153,182).

Regarding claim 3, Gue in view of Gallo fails to disclose the metal stock is square. However, Skamser discloses a tool piece wherein the metal stock is square. See bottom of FIGS 1 and 2. Considering a manufacturing standpoint, the square stock would be easier to machine than the round stock used in the Gue and Gallo devices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to use square stock for the tool piece, as disclosed by Skamser, on the Gue in view of Gallo device for the purpose of easily machining the device.

Regarding claim 4, Gue discloses the metal stock is tapered to define a blade (18).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen as applied to claim 1 above, and further in view of Kraus (4,235,269). Allen teaches the second end of said bar (2) has a tool piece receptacle defined therein, but fails to teach a set screw. However, Kraus discloses a set screw aperture and a set screw (16) engaging the set screw aperture, whereby a tool piece is removably retained. The set screw (16) secures the removable component in place until it is desired to detach it. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a set screw and aperture, as disclosed by Kraus, on the Allen device for the purpose of securing the removable component until it is desired to detach it.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gue in view of Gallo as applied to claim 1 above, and further in view of Kraus (4,235,269). Gue in view of Gallo fails to disclose a tool piece receptacle or a set screw. However, Kraus discloses a tool piece receptacle that allows the tip of the tool piece (1) to be removed from the bar (20). Making the tool piece removable allows the part to be changed according to the operator's needs. See Abstract. In addition, Kraus discloses a set screw aperture and a set screw (16) engaging the set screw aperture, whereby a tool piece (1) is removably retained. The set screw (16) secures the removable component

in place until it is desired to detach it. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide tool piece receptacle and set screw, as disclosed by Kraus, on the Gue in view of Gallo device for the purposes of replacing and securing the tool piece.

13. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen as applied to claim 1 above, and further in view of Lampe (6,213,527).

Regarding claim 9, Allen fails to teach the top surface of the lock removal tool is tapered along the trailing edge. However, Lampe discloses a lock removal tool with an elongated bar (1) and a lock cutting tool (2). The top surface of the lock cutting tool (2) is tapered along the trailing edge (22). This feature creates a sharpened surface that allows the trailing edge to perform different tasks, such as chopping (col. 4, lines 16-18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a tapered trailing edge, as disclosed by Lampe, on the Allen device for the purpose of creating two operable edges on the lock cutting tool.

Regarding claim 11, Allen fails to teach at least one groove formed in the top surface of the cutting tool. However, Lampe discloses a cutting tool (2) with at least one groove (8) extending transversely across the top surface. The grooves (8) grip and provide friction when an object is placed on top of the tool. See FIGS. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least one groove, as disclosed by Lampe, on the Allen device for the purpose of gripping an object on top of the top.

14. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gue in view of Gallo as applied to claim 1 above, and further in view of Lampe.

Regarding claim 9, Gue in view of Gallo fails to disclose the top surface of the lock removal tool is tapered along the trailing edge. However, Lampe discloses a lock removal tool with an elongated bar (1) and a lock cutting tool (2). The top surface of the lock cutting tool (2) is tapered along the trailing edge (22). This feature creates a sharpened surface that allows the trailing edge to perform different tasks, such as chopping (col. 4, lines 16-18). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a tapered trailing edge, as disclosed by Lampe, on the Gue in view of Gallo device for the purpose of creating two operable edges on the lock cutting tool.

Regarding claim 11, Gue in view of Gallo fails to disclose at least one groove formed in the top surface of the cutting tool. However, Lampe discloses a cutting tool (2) with at least one groove (8) extending transversely across the top surface. The grooves (8) grip and provide friction when an object is place on top of the tool. See FIGS. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least one groove, as disclosed by Lampe, on the Gue in view of Gallo device for the purpose of gripping an object on top of the top.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen ('712) as applied to claim 1 above, and further in view of Allen (D262,513). Allen ('712) fails to teach the bottom surface of the cutting tool is curved at the leading edge. However, Allen ('513) teaches a lock removal tool wherein the bottom surface of the

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cutting tool is curved at the leading edge. See FIG 1. The curved bottom surface allows for a rocking motion during lock removal that would ease the process. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a curved bottom surface on the leading edge of the lock cutting tool, as taught by Allen ('513), on the Allen ('712) device in order to ease the removal purpose through rocking.

16. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gue in view of Gallo as applied to claim 1 above, and further in view of Allen ('513). Gue in view of Gallo fails to disclose the bottom surface of the cutting tool is curved at the leading edge. However, Allen teaches a lock removal tool wherein the bottom surface of the cutting tool is curved at the leading edge. See FIG 1. The curved bottom surface allows for a rocking motion during lock removal that would ease the process. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a curved bottom surface on the leading edge of the lock cutting tool, as taught by Allen, on the Gue in view of Gallo device in order to ease the removal purpose through rocking.

17. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen as applied to claim 1 above, and further in view of Harpell (6,098,292).

Regarding claim 12, Allen fails to teach at least one groove formed in the bottom surface of the cutting tool. However, Harpell discloses a cutting tool (3) with at least one groove (41) extending transversely across the bottom surface. The groove strengthens the tool (col. 4, lines 23-27). Therefore, it would have been obvious to one

of ordinary skill in the art at the time the invention was made to provide at least one groove on the bottom surface of the cutting tool, as disclosed by Harpell, on the Allen device for the purpose of strengthening the tool.

Regarding claim 13, Allen fails to teach the bar and lock cutting tool are joined at an angle between 15 and 45 degrees. However, Harpell discloses a removal tool wherein a bar and a cutting tool are joined at an angle of between 15 and 45 degrees. See col. 5, lines 32-36. This angle is particularly useful for demolition work, especially prying (col. 5, lines 36-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an angle of 15 to 45 degrees between the bar and lock cutting tool, as disclosed by Harpell, on the Allen device for the purpose of effectively prying the lock from the door.

18. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gue in view of Gallo as applied to claim 1 above, and further in view of Harpell. Gue in view of Gallo fails to disclose at least one groove formed in the bottom surface of the cutting tool. However, Harpell discloses a cutting tool (3) with at least one groove (41) extending transversely across the bottom surface. The groove strengthens the tool (col. 4, lines 23-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least one groove on the bottom surface of the cutting tool, as disclosed by Harpell, on the Gue in view of Gallo device for the purpose of strengthening the tool.

Response to Arguments

19. Applicant's arguments filed April 29, 2005 have been fully considered but they are not persuasive.
20. Regarding applicant's argument the Allen reference does not disclose a trailing edge, applicant is reminded the broadest reasonable interpretation of the term "trailing" can be used in rejecting the claim. Although applicant appears to be stating the term "trailing" is limited to mean "tapering," the examiner is interpreting the term to mean "following." Thus the edge (defined as a line or point at a beginning or an end) identified in the Allen reference as trailing indeed follows the leading edge.
21. Regarding applicant's argument the bar is not joined between the leading and trailing edges in the Allen reference, the examiner disagrees. As shown in the *Figures* section of this action, the bar is clearly joined between the two edges. A further magnification of the figure has been included in order to aid understanding.
22. Applicant argues the bar is not angled away from the top surface of the tool, but instead is perpendicular to it in the Allen reference. Applicant is reminded that a 90-degree angle is still an angle, and thus the bar is angled away from the tool. In addition, it should be noted that the top surface of the tool slopes upward, and as such the angle between the top surface and bar is actually greater than 90 degrees.
23. Regarding applicant's argument the bar does not extend rearward from the lock cutting tool in the Allen reference, applicant is directed toward FIG 1 of the *Figures* section. Directions have been added to this figure for further illustration. The figure clearly shows that the bar extends rearward from the tool.

24. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instance case, the Gue and Gallo devices can be combined because both are substantially similar in structure, comprising slide hammers and a different chisel at each end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to exchange a chisel on the Gue device for a Gallo chisel. Depending on the operation, a more angled chisel, such as the one disclosed by Gallo, may be advantageous.

Figures

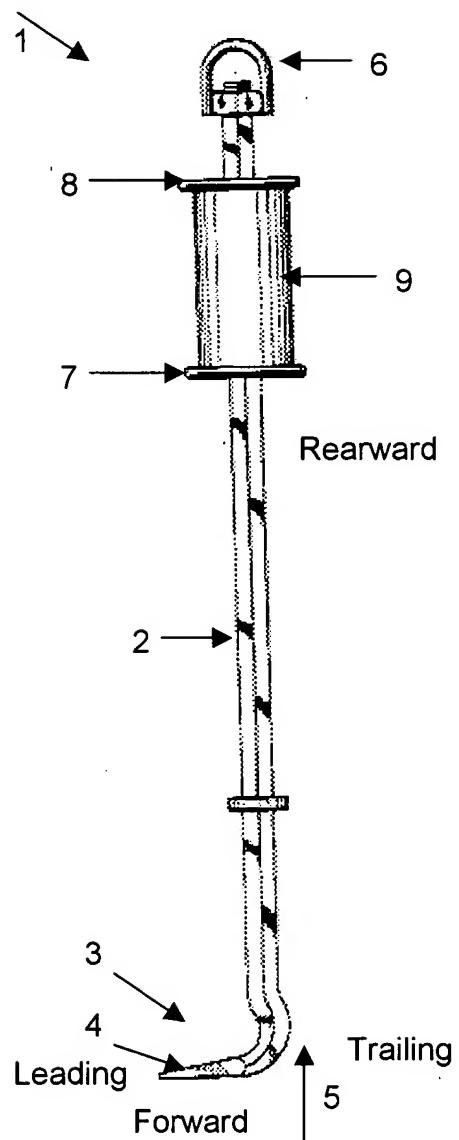


Figure 1 of D272,712 to Allen. Lead lines, reference numbers, and directions added by the examiner.

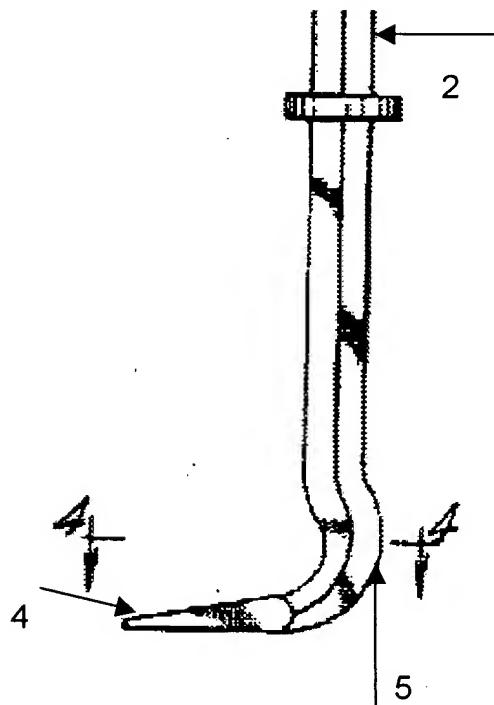


Figure 1 (enlarged) of D272,712 to Allen. Lead lines and reference numbers added by the examiner.

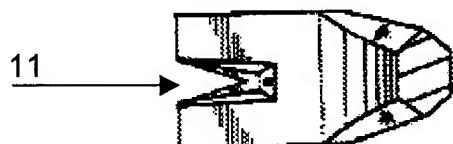


FIG. 4



FIG. 5

Figures 4 and 5 of D272,712 to Allen. Lead lines and reference numbers added by the examiner.

Conclusion

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

g3
CB
July 8, 2005


STEPHEN CHOI
PRIMARY EXAMINER